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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT POPP and WILLIAM LYNCH

Appeal 2009-004811
Application 10/632,596
Technology Center 3700

Decided:¹ July 27, 2009

Before TONI R. SCHEINER, ERIC GRIMES, and STEPHEN WALSH,
Administrative Patent Judges.

WALSH, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a packaged garment and to a package of garments. The Patent Examiner

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

rejected the claims as anticipated. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

The invention concerns packaged garments having refastenable seams. Spec. 2:5-7. Claims 1-22, which are all the pending claims, are on appeal. Independent claims 1, 18, 19 and 22 read as follows:

1. A packaged garment defining a waist opening and a leg opening, the garment comprising,

a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;

a front side panel extending transversely from a side of the front panel;

a back side panel extending transversely from a side of the back panel;

wherein the front side panel is connected to the back side panel to form a prefastened, refastenable seam, the refastenable seam comprising a fastening component;

wherein the fastening component lies in a plane approximately perpendicular to a plane in which the front panel lies.

18. A packaged garment having a waist opening and a leg opening, the garment comprising,

a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;

a front side panel extending transversely from a side of the front panel, the front side panel having a body facing surface and a clothing facing surface;

a back side panel extending transversely from a side of the back panel, the back side panel having a body facing surface and a clothing facing surface;

wherein the front side panel is connected to the back side panel to form a prefastened, refastenable seam, the refastenable seam comprising a fastening component,

wherein the fastening component lies in a plane approximately parallel to a plane in which an adjacent enclosure side wall lies.

19. A package of prefastened, refastenable garments, comprising:

a generally polyhedral enclosure composed of a flexible material surrounding a plurality of prefastened, refastenable garments, the polyhedral enclosure comprising a pair of side walls, a pair of end walls, a top wall, and a bottom wall,

wherein each of the plurality of garments comprises:

a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;

a front side panel extending transversely from a side of the front panel;

a back side panel extending transversely from a side of the back panel;

wherein the front side panel is connected to the back side panel to form a prefastened, refastenable seam, the refastenable seam comprising a fastening component;

wherein the fastening component lies in a plane approximately perpendicular to a plane in which the front region lies, and in a plane approximately parallel to a plane in which an adjacent side wall lies.

22. A package of prefastened, refastenable pant-like disposable garments, comprising:

a generally polyhedral enclosure composed of a flexible material surrounding a plurality of prefastened, refastenable disposable garments, the polyhedral enclosure comprising a pair of side walls, a pair of end walls, a top wall, and a bottom wall, wherein each garment comprises front and back regions, a crotch region connection [sic] the front and back regions, and at [sic] a fastening component connecting the front and back regions to place each of the plurality of garments in a prefastened, pantlike configuration;

wherein each fastening component lies in a plane which is approximately parallel to a plane occupied by an adjacent enclosure wall.

The Examiner relied on the following evidence:

Popp	US 2002/0123730 A1	Sep. 5, 2002
Kuske	WO 97/49618	Dec. 31, 1997

The Examiner rejected all the claims, claims 1-22, under 35 U.S.C. § 102(a) as anticipated by Popp's published patent application.

ANTICIPATION

The Issues

The Examiner's position is that Popp's published application disclosed Appellants' packaged garment having a fastening component lying in a plane perpendicular to the plane in which the front panel of the garment lies. (Ans. 4).

Appellants contend that their packaged garment has fasteners arranged perpendicular to the garment front panel, referring to Figs. 5-17 as examples. (App. Br. 5). Appellants argue that the fastener orientation in Popp's published application "is directed to essentially the opposite of Appellants' invention as presently claimed," referring to Popp's Figs. 4-19. (App. Br. 6).

The issue with respect to this rejection is whether the fastening component on the packaged garment described in Popp's published application was arranged "in a plane approximately perpendicular to a plane in which the [garment's] front panel lies."

Findings of Fact

1. We adopt the Examiner's identification of element numbers in Popp's published application that correspond to the elements in Appellants' claims. *See* Ans. 3-4.²
2. Popp's published application taught packaged garments. Para. [0113].
3. Popp's published application included Figs. 4-19, which showed fastening components 82 and 84 in a parallel orientation to the front panel 35.
4. Popp's published application explained: "Due to the flat orientation of the refastenable seams 80 lying parallel to the flat waist regions 90, 92 of the garment, the resilient fastening components remain flat and do not become creased or crushed when the garment is compressed and packaged." Para. [0113].

² One finding has a simple typographical error: "the second refastenable seam comprising a second fastening component 82 [sic, 84]." (Ans. 4).

Principles of Law

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.

In re Schreiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (citations omitted).

Analysis

Claim 1

Popp's published application explicitly described the relative orientation of the refastenable seams as "lying parallel to" the waist region. FF4. Figs. 4-19 illustrate the parallel arrangement. We find no evidence to support the Examiner's finding of a perpendicular arrangement between a fastener component and the front panel in Popp's disclosure. We therefore reverse this rejection.

Claim 18

In the packaged garment of claim 18, "the fastening component lies in a plane approximately parallel to a plane in which an adjacent enclosure side wall lies."

We find that the Popp reference did not explicitly disclose the claimed configuration, and that the Examiner did not explain how the reference anticipated a packaged garment with the claimed configuration. We therefore reverse this rejection.

Claim 19

Claim 19 is directed to “[a] package of prefastened, refastenable garments . . . wherein the fastening component lies in a plane approximately perpendicular to a plane in which the front region lies, and in a plane approximately parallel to a plane in which an adjacent side wall lies.”

Appellants argue that the Popp reference did “not disclose a package of garments having these features. Indeed, the Examiner offers no analysis of how the fasteners on the garments of the ‘730 [application] could or would manifest the spatial orientations of the fasteners described in claim 19.” (App. Br. 8). We agree that Popp did not explicitly disclose the claimed features, and that the Examiner did not explain how the reference anticipated the claimed package. We therefore reverse this rejection.

Claim 22

Claim 22 is drawn to “[a] package of prefastened, refastenable pant-like disposable garments . . . wherein each fastening component lies in a plane which is approximately parallel to a plane occupied by an adjacent enclosure wall.”

Appellants argue that the Popp reference did “not disclose or suggest such a configuration. And again, the Examiner offers no substantive analysis of how the fasteners on the garments of the ‘730 [application] could or would manifest the spatial orientations” claimed. (App. Br. 8). We agree that Popp did not explicitly disclose the claimed feature, and that the Examiner did not explain how Popp anticipated the claim. We therefore reverse this rejection.

CONCLUSIONS OF LAW

The fastening component on the packaged garment described in Popp's published application was not arranged "in a plane approximately perpendicular to a plane in which the [garment's] front panel lies."

The Examiner did not provide evidence showing that the Popp reference anticipated, explicitly or inherently, the features of the articles that Appellants claim.

SUMMARY

We reverse the rejection of claims 1-22 under 35 U.S.C. § 102(a) as anticipated by Popp's published patent application

REVERSED

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